

COMMISSIONERS JOURNAL NO. 42 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JULY 9, 2001

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: James Ward, Deborah Martin, Donald Wuertz (Absent)

8:00 AM – Duncan Whitney, County Prosecutor

10:00 AM – Opening for Plans Examination

1:30 PM- Viewing Ditch Petition for Gwinner Ditch #262 Filed by Dan Lane and Others

7:00 PM – Public Hearing for Annexation of 9.685 Acres from Delaware Township to City of Delaware (Postponed from July 2, 2001)

PUBLIC COMMENT – Mr. Carl Franklin, Ashley City County, thanked the Commissioners for he support and financial assistance to the Village of Ashley. They recognized Tim Boland for all his hard work.

RESOLUTION NO. 01-720

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS NUMBERED 309222 THROUGH 309363:

It was moved by Mrs. Martin, seconded by Mr. Ward to approve for payment warrants numbered 309222 through 309363 and Purchase Orders and Vouchers as listed below:

PO's

<u>PO Number</u>	<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
1P08798	Delaware County Sheriff	Whitson Property/Sheriff's Sale	8612-4001	\$ 70,800.00
1P04362	Dale Wilgus, Treasurer	Retainage for Alum Creek Facility	3590-4020	\$ 8,166.53

Vouchers

1B43054	LHS Family & Youth Services	Cluster	4535-2081	\$ 5,323.50
1B43054	Adriel School	Cluster	4535-2081	\$ 5,146.00
1P09638	George J. Igel & Co.	Greif Bros. Project	8110-4020	\$ 294,278.61
1B04296	Fort Defiance Construction	Const. & Supply for Africa Rd. Extension	3590-4020	\$ 413,291.87
1B01720	Jess Howard Electric	Contract for Alum Creek Pump Station & Central Maint.	3590-4011	\$ 103,340.92
1B01725	Kokosing Const. Co.	Contract for Alum Creek Pump Station & Central Maint.	3590-4011	\$ 42,930.30
1B01723	Kirk Williams Co.	HVAC Contract for Alum Creek Facility	3590-4011	\$ 71,458.09
1B01724	Kirk Williams Co.	Plumbing Work for Alum Creek Facility	3590-4011	\$ 21,129.49
1B01722	Jess Howard Electric	Contract for Scada System for Alum Creek Facility	3590-4011	\$ 24,594.12
1B01721	Jess Howard Electric	Contract for Electrical Work /Alum Creek Facility	3590-4011	\$ 199,349.59
1B01726	Kokosing Const. Co.	Contract/General Construction/Alum Creek Facility	3590-4011	\$ 260,910.05
1B02727	AEP	Electric Service to OECC & Pump Stations	3530-2600	\$ 96,292.81
1B43099	Del Cty Bd of Dev Disabilities	Board & Care	0270-2054	\$ 8,750.00
1B03882	Postmaster	Postal Service	0130-2200	\$ 20,000.00

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Absent

RESOLUTION NO. 01-721

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

Emergency Services is requesting that Dave Hall and Larry Fisher attend the All-Hazards Conference at Orlando on August 5 through August 10, 2001, in the amount of \$2,910.50.

Administrative Services is requesting that Steven Savon attend the OSHA Training Class at Findlay University on August 13 through August 16, 2001, in the amount of \$1,470.00.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Absent

RESOLUTION NO. 01-722

IN THE MATTER OF AUTHORIZING EXECUTION OF AN AMENDMENT OF AN ENTERPRISE ZONE AGREEMENT WITH DIGITAL STORAGE, INC., AND FREM II, LTD:

It was moved by Mrs. Martin, seconded by Mr. Ward to authorize the following:

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WHEREAS, Orange Township and Delaware County have encouraged the development of real estate and the investment in personal property within a certain area of the township via the establishment of an Enterprise Zone Area; and

WHEREAS, the Delaware County Board of Commissioners, Orange Township, Digital Storage, Inc., and FREM II, LTD did enter into an Enterprise Zone Agreement dated September 30, 1996, and agreed to an amendment of said agreement dated February 22, 2000, in conjunction with a PROJECT to be undertaken to construct a 60,000 square foot corporate office and distribution center, and to make certain investment in tangible personal property, in Orange Township located at 7611 Green Meadows Drive, Lewis Center, Ohio; and

WHEREAS, pursuant to said Enterprise Zone Agreement, and as amended, Digital Storage, Inc. and FREM II, LTD were to receive certain tax incentives as the presumed tenant and investor in personal property and real property improvements, and creator of new full-time equivalent job opportunities and retainer of existing full-time equivalent jobs at the PROJECT site; and

WHEREAS, it is now understood by all parties of the original Enterprise Zone Agreement, and as amended, for the referenced PROJECT that on October 23, 2000, Digital Storage, Inc. reorganized its corporate assets, and as part of this reorganization, Digital Storage, Inc., the parent/holding company, incorporated Digital Storage LLC, a wholly owned Ohio limited liability company, to be the operating company located at 7611 Green Meadows Drive, and engaged in the same business formerly operated by Digital Storage Inc.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio, that the Enterprise Zone Agreement for the Digital Storage PROJECT, originally dated September 30, 1996, and as amended on February 22, 2000, is hereby amended to include the following consideration:

1. As of October 23, 2000, Digital Storage, LLC shall be an additional project participant, in addition to Digital Storage, Inc. and FREM II, LTD, and shall therefore be a party of the Enterprise Zone Agreement, and as amended.
2. Digital Storage, Inc. and Digital Storage, LLC shall be responsible for attaining and maintaining the levels of investment in personal property and the levels of job and payroll creation as stated in the Enterprise Zone Agreement, dated September 30, 1996, as amended on February 22, 2000, and shall remain in business at the PROJECT site for at least the 10-year term of the Enterprise Zone Agreement.
3. Digital Storage, Inc., Digital Storage, LLC and FREM II, LTD shall be responsible for all other obligations and commitments stated in the Enterprise Zone Agreement, dated September 30, 1996, as amended on February 22, 2000.
4. If Digital Storage, Inc., Digital Storage, LLC, or FREM II, LTD materially fail to fulfill their obligations under this agreement, or if Delaware County determines that the certification as to delinquent taxes required by this agreement is fraudulent, Delaware County and Orange Township may terminate or modify the exemptions from taxation granted under this agreement, and may require the repayment, from Digital Storage, Inc., Digital Storage, LLC, or FREM II, LTD, of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement, and as amended.
5. Delaware County shall grant the personal and real property tax exemptions called for under the Agreement, and as amended, for the referenced PROJECT in recognition of this amendment and the terms and conditions established therein.
6. The Delaware County Director of Economic Development is directed to formally notify the Olentangy Local Schools District, the Delaware County Joint Vocational School District, the Delaware County Auditor, the Ohio Department of Development, and the Ohio Department of Taxation in writing of this amendment.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Absent

RESOLUTION NO. 01-723

IN THE MATTER OF AUTHORIZING THE ASSIGNMENT OF AN ENTERPRISE ZONE AGREEMENT WITH SUBMITORDER.COM, INC., TO SUBMITORDER, INC.:

It was moved by Mrs. Martin , seconded by Mr. Ward to authorize the following:

WHEREAS, the Delaware County Board of Commissioners, Orange Township, and SubmitOrder.com, Inc. did enter into an Enterprise Zone Agreement dated February 22, 2000, in conjunction with a PROJECT to be undertaken within an existing 71,500 square foot building in Orange Township located at 7991 Columbus Pike, Lewis Center, Ohio; and

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WHEREAS, it is now understood by all Parties to the original Enterprise Zone Agreement for the referenced PROJECT that on December 29, 2000, a transaction was completed between SubmitOrder.com, Inc. and SubmitOrder, Inc. that merged SubmitOrder.com, Inc., an Ohio Corporation, into a newly created and wholly owned subsidiary SubmitOrder, Inc., a Delaware Corporation. As a result of this transaction, SubmitOrder.com, Inc. has ceased to exist and SubmitOrder, Inc. maintains the same address, the same executive staff, the same assets and liabilities, and the same Board of Directors as formerly maintained by SubmitOrder.com, Inc.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Board of Commissioners, County of Delaware, State of Ohio, that the Board of Commissioners hereby assent to the assignment of the Enterprise Zone Agreement for the SubmitOrder.com PROJECT, originally dated February 22, 2000, as follows:

1. The Enterprise Zone Agreement, including all benefits and obligations included therein, dated February 22, 2000, shall be assigned from SubmitOrder.com, Inc. to SubmitOrder, Inc., a Delaware Corporation, as the PROJECT participant, having all benefits and obligations provided for SubmitOrder.com, Inc. in the Enterprise Zone Agreement.
2. If SubmitOrder, Inc. materially fails to fulfill its obligations under this Agreement, or if Delaware County and Orange Township determine that the certification as to delinquent taxes required by the Enterprise Zone Agreement dated February 22, 2000 is fraudulent, Delaware County and Orange Township may terminate or modify the exemptions from taxation granted under the Enterprise Zone Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.
3. Delaware County shall grant the personal property tax exemption called for under the Agreement for the referenced PROJECT in recognition of this assignment and the terms and conditions established therein.
4. The Delaware County Director of Economic Development is directed to formally notify the Delaware County Auditor, the Ohio Department of Development, the Ohio Department of Taxation, the Olentangy Local School District and the Delaware Joint Vocational School of this action.

Vote on Motion Mr. Wuertz Absent Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-724

A RESOLUTION AUTHORIZING THE USE OF DELAWARE COUNTY REVOLVING LOAN FUNDS (RLF) TO PROVIDE ASSISTANCE IN FUNDING THE VILLAGE OF ASHLEY STORM DRAINAGE IMPROVEMENT PROJECT IN ADDITION TO FUNDS ALLOCATED THROUGH THE FISCAL YEAR 2000 COMMUNITY DEVELOPMENT BLOCK GRANT SMALL CITIES FORMULA PROGRAM FOR THIS PROJECT.

It was moved by Mrs. Martin, seconded by Mr. Ward to authorize the following:

WHEREAS, Delaware County has received a grant for \$127,000 in Fiscal Year 2000 Small Cities Community Development Block (CDBG) grant funds under the Formula Program for various improvement and planning projects in the County, and

WHEREAS, the Village of Ashley Storm Drainage Improvements Project is one of the activities funded by this grant, being allocated \$56,000 from said grant for the construction of this Project; and

WHEREAS, this Project also is to receive \$210,000 in funding from Ohio Public Works Commission (OPWC) Issue II program; and

WHEREAS, it is anticipated that a funding gap exists between the total cost of said project and the amount of funds available to totally fund these projects from the FY00 CDBG Small Cities Formula Program and OPWC Issue II sources; and

WHEREAS, the Village of Ashley has committed \$6,789 towards filling this gap, and has requested additional funding for the Project from the Delaware County Revolving Loan Fund (RLF) in the amount of \$30,000 to fill said funding gap for this Project; and

WHEREAS, Delaware County has established a Revolving loan Fund (RLF) capitalized with the payback from CDBG loans to local businesses to assist businesses and communities with economic development loans and community development grants; and

WHEREAS, the CDBG funds to be utilized for this Project will meet the needs of the community's low and moderate-income households and the National Objectives established for the CDBG Program.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED, by the Board of

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Commissioners, County of Delaware, State of Ohio as follows:

Section 1. That the Delaware County Board of Commissioners hereby approve a RLF infrastructure grant in the amount of \$30,000 to further assist in the construction of a Storm Drainage Improvement Project in the Village of Ashley, Ohio.

Section 2. Upon passage of this resolution, approval by the Ohio Department of Development, and clearance of ERR timeframes, the President of the Board shall be authorized to file the necessary forms with the Ohio Department of Development to secure said RLF financing for the identified project listed above.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 01-725

IN THE MATTER OF APPROVING THE SANITARY SEWER PLANS FOR GRAND OAK, SECTION 1; GRAND OAK CONDOMINIUMS AND HOMESTEAD AT HIGHLAND LAKES, SECTION 1:

It was moved by Mrs. Martin, seconded by Mr. Ward to approve sanitary sewer plans for Grand Oak, Section 1, Grand Oak Condominiums and Homestead at Highland Lakes, Section 1 submittal to the Ohio EPA for their approval as per recommendation of the County Sanitary Engineer.

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Absent

RESOLUTION NO. 01-726

IN THE MATTER OF ACCEPTANCE OF THE SANITARY SEWERS IN HIGHLAND LAKES NORTH, SECTION 7:

It was moved by Mrs. Martin, seconded by Mr. Ward to accept the sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

Highland Lakes North, Section 7 1,275 feet of 8 inch sewer 6 manholes

Vote on Motion Mr. Wuertz Absent Mr. Ward Aye Mrs. Martin Aye

RESOLUTION NO. 01-727

IN THE MATTER OF ACCEPTING AND AWARDING THE BIDS FOR BID PACKAGE ELEVEN (MASONRY); BID PACKAGE THIRTEEN (ROOFING); BID PACKAGE SIXTEEN (DRYWALL/ROUGH CARPENTRY/EIFS/ACOUSTICAL CEILING) AND AWARDING THE BID AND CONTRACT FOR BID PACKAGE NINETEEN (ELEVATORS):

It was moved by Mrs. Martin, seconded by Mr. Ward to pull Bid Package Sixteen until July 12 and accept Bid Package Eleven, Bid Package Thirteen and awarding the bid and contract for Bid Package Nineteen:

Whereas, Delaware County went out to bid and bids were taken on May 11, 2001, for (Bid Package Nineteen (Elevators) and June 20, 2001, Bid Packages Eleven, Thirteen, and Sixteen), and

Whereas, after carefully reviewing Bovis Lend Lease recommends the bids submitted by the companies listed below have been determined to be the lowest and best bids;

Now Therefore Be It Resolved, by the Board of Commissioners, Delaware County, State of Ohio, approve and accept the bids submitted by the following companies.

<u>Bid Package Number/Description</u>	<u>Company Recommended</u>	<u>Amount of Contract Award</u>	<u>Alternates</u>
Bid Package Eleven (Masonry)	C&R Masonry	\$750,760.00	(\$17,500) for not installing masonry at lower retaining wall included in contract amount recommendation (Alternates Not Recommended) Stainless steel wall ties
Bid Package Thirteen (Roofing)	Chemcote	\$334,980.21	None
Bid Package Nineteen –	Otis Elevator Company	\$219,000.00	No alternates were

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(Elevators)			recommended for acceptance
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CONTRACT

This Contract made by and between:

**Otis Elevator Company
2231 Westbrooke Drive
Columbus, Ohio 43228**

(the "Contractor") and the Delaware County Board of Commissioners (the "Owner").

In consideration of the mutual promises herein contained, the Delaware County Board of Commissioners and the Contractor agree as set forth below:

ARTICLE 1

1.1 The Contractor shall perform the entire work described in the Bid Documents (exclusive of qualifications submitted with the Bid Form) and reasonably inferable by the Contractor as necessary to produce the results intended by the Bid Documents (exclusive of qualifications submitted with the Bid Form) for:

**Bid Package Nineteen – ELEVATORS
Delaware County Services Building
124-148 North Sandusky Street
Delaware, Ohio 43015**

ARTICLE 2

2.1 The Delaware County Board of Commissioners shall pay the Contractor for the performance of this Contract, subject to additions and deletions as provided in the Bid Documents (exclusive of qualifications submitted with the Bid Form), the amount of Two Hundred Nineteen Thousand, Nine Hundred Eighty dollars (\$219, 980), based upon the Bid Form (excluding qualifications submitted with the Bid Form), dated May 11, 2001 submitted by the Contractor.

***\$219,980 Base Bid
no alternates awarded
Total Contract Amount \$219,980***

2.2 The Contract Price shall be paid in current funds by the Owner upon payment requests issued by the Contractor and approved by the Delaware County Board of Commissioners as provided in the Bid Documents (exclusive of qualifications submitted with the Bid Form).

ARTICLE 3

The Contractor shall diligently prosecute the Work and shall effect Contract Completion on or before	
Completion of Service Elevator	1/7/2002
Substantial Completion for all Bid Package Contracts	3/6/2002
Completion of all Architects Prepared Punch list Items	4/10/2002

unless an extension of time is granted by the Delaware County Board of Commissioners in accordance with the Bid Documents (exclusive of qualifications submitted with the Bid Form).

3.2 It is understood and agreed that all Work to be performed under the Contract shall be completed within the established Contract Completion time and that each applicable portion of the Work shall be completed on or before the respective Milestone Completion Dates, unless an extension of time is granted by the Delaware County Board of Commissioners in accordance with the Bid Documents (exclusive of qualifications submitted with the Bid Form).

3.3 Upon failure to have all Work completed within the specified period of time, or to have the applicable portion of the Work completed upon the date of any Milestone Completion Date, the Delaware County Board of Commissioners shall be entitled to retain or recover from the Contractor, as liquidated damages, and not as a penalty, the applicable amount as set forth in the following table for each and every calendar day thereafter until Contract Completion, unless an extension of time is granted in accordance with the Bid Documents (exclusive of qualifications submitted with the Bid Form).

3.4 The amount of Liquidated Damages is agreed upon by and between the Contractor and the Delaware County Board of Commissioners because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the Delaware County Board of Commissioners would sustain.

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3.5 LIQUIDATED DAMAGES

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 To \$50,000	\$ 150.00
More than \$50,000 to \$150,000	\$ 250.00
More than \$150,000 to \$500,000	\$ 500.00
More than \$500,000 to \$2,000,000	\$1,000.00
More than \$2,000,000 to \$5,000,000	\$2,000.00
More than \$5,000,000 to \$10,000,000	\$2,500.00
More than \$10,000,000	\$3,000.00

ARTICLE 4

- 4.1 This Contract shall embody the entire understanding of the parties and form the basis of the Contract between the Delaware County Board of Commissioners and the Contractor. The Bid Documents (exclusive of qualifications submitted with the Bid Form) shall be considered to be incorporated by reference into this Contract as if fully rewritten herein, and made a part hereof.
- 4.2 The Contract and any modification, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio. Any legal action arising pursuant to this Contract shall be brought in a court of competent jurisdiction in the State of Ohio.
- 4.3 If any term or provision of the Contract, or the application thereof to any person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.
- 4.4 The Contract shall be binding on the Contractor and the Delaware County Board of Commissioners, their successors and assigns, in respect to all covenants and obligations contained in the Contract, but the Contract may not be assigned by the Contractor without the prior written consent of the Delaware County Board of Commissioners.

ARTICLE 5

- 5.1 It is expressly understood by the Contractor that none of the rights, duties and obligations described in the Contract shall be valid and enforceable unless the Delaware County Auditor first certifies funds are available.
- 5.2 The Contract shall become binding and effective upon the completion of 5.1 and execution by the Delaware County Board of Commissioners.

ARTICLE 6

- 6.1 This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

ARTICLE 7

- 7.1 The Contractor's responsibility for consequential damages shall be capped to an aggregate amount not to exceed the Contract value.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 01-728

7:00 PM – PUBLIC HEARING FOR ANNEXATION OF 9.685 ACRES FROM DELAWARE TOWNSHIP TO CITY OF DELAWARE RECONVENE FROM JULY 2:

It was moved by Mrs. Martin, seconded by Mr. Ward to Close the Hearing:

Vote on Motion Mr. Ward Aye Mrs. Martin Aye Mr. Wuertz Absent

RESOLUTION NO. 01-729

ORDER OF COMMISSIONERS FOR ANNEXATION OF 9.685, MORE OR LESS, ACRES OF LAND FROM DELAWARE TOWNSHIP TO THE CITY OF DELAWARE:

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It was moved by Mrs. Martin, seconded by Mr. Ward to approve the following resolution:

The Commissioners of Delaware County, Ohio having on the 9th day of July 2001, heard the petition of the majority of landowners in the area described to obtain Annexation of territory described in the petition to the City of Delaware, and having in open meeting heard all the persons desiring to be heard for or against the granting of said petition had having considered any affidavits presented with reference thereto and being fully advised in the premises do find that:

1. The petition contains all matters required by Sections 709.02 of the Ohio Revised Code;
2. Notice has been published as required by the Ohio Revised Code Section 709.03 and 709.031 and Ordinance has been adopted by and submitted by the City of Delaware as required by Section 709.031(B) of the Revised Code;
3. The persons whose names are subscribed to the petition are the real owners of real estate in the territory described in the petition and as of the time the petition was filed with this Board of County Commissioners the number of valid signatures on the petition constitute a majority of the owners of real estate in the territory proposed to be annexed.
4. The territory included in the annexation petition is not unreasonably large;
5. The plat of the territory to be annexed is accurate, and
6. The general good of the territory sought to be annexed will be served if the annexation petition is granted, and

It is hereby ordered that the prayer of said petition be granted and that the territory described in said petition be annexed, signed by a majority in accordance with law, and that a certified transcript, signed by a majority of this Board, of all orders and proceedings of said Board relative to said petition and the hearing thereon, together with said petition and the maps attached hereto, and all papers on file relating to said matter, be delivered to the Clerk of the City of Delaware, Ohio.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

10:00 AM – Opening for Plans Examination

Documents were submitted from the following firms:

R. D. Zande	Benatec Associates
DLM Engineering	Architecture
Milhoan	C & P Engineering

These will be reviewed and a firm selected and presented to the Commissioners at a later date.

1:30 PM- Viewing Ditch Petition for Gwinner Ditch #262 Filed by Dan Lane and Others – Commissioners held the viewing as scheduled

There being no further business, the meeting adjourned.

Deborah Martin

James D. Ward

Donald Wuertz

Letha George, Clerk to the Commissioners